

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.57 of 1993.

Decided on : October 24, 2007

State of H.P.	...Appellant.
Versus	
Davender Singh and others	...Respondents.

Coram

The Hon’ble Mr. Justice Surjit Singh, Judge.

The Hon’ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. Yoginder Pal, Advocate, vice Mr. H.K. Bhardwaj, Advocate.

Surjit Singh, Judge(Oral)

Respondents were sent up for trial for an offence punishable under Section 436 read with Section 34 IPC for allegedly committing an offence of mischief by fire, by setting ablaze a thatched structure of PW-1 Udhmi Devi, on 13th July, 1990 at 12 noon.

2. Case was registered against the respondents at the instance of PW-1 Udhmi Devi, who alleged that around 12 in the noon on 13th July, 1990, all the three respondents came to her thatched structure, where her husband used to run a small shop and threatened her to remove the articles kept in the structure and vacate the same. She further reported that when she told the respondents that her husband was not there and they should wait for him, the respondents threatened to set the structure on fire and soon thereafter one of the

Whether reporters of the local papers may be allowed to see the judgment?

respondents lighted a match-stick, another respondent provided a piece of paper, which was then lighted with the help of lighted match-stick, and then the structure was set on fire with that lighted piece of paper.

3. Police investigated the case and recorded the statements of certain persons, who claimed to be eye-witnesses and finally challaned the respondents.

4. Trial Court, on the conclusion of the trial, acquitted all the three respondents, holding that the evidence of the prosecution was self-contradictory.

5. We have heard the learned Additional Advocate General.

6. Prosecution examined PW-1 Udhmi Devi, her son PW-4 Ram Pal, her daughter PW-5 Bholi Devi, PW-6 Tara Chand and one Des Raj (PW-2), all of whom, according to the prosecution version, were the eye-witnesses. PW-6 Tara Chand is not named in the FIR as a witness. PW-1 Udhmi Devi, no doubt, stated that the three respondents set the structure on fire and her son PW-4 Ram Pal and daughter PW-5 Bholi Devi also said so, but there are some contradictions in their testimony, which indicate that they have not come out with the true version of the cause of the fire. While PW-1 Udhmi Devi stated that the match-stick was lit by respondent Jasbir, PW-4 Ram Pal stated that it was lit by respondent Praduman. PW-4 Ram Pal did not deny certain suggestions put to him, which were indicative of the innocence of the respondents and the involvement of his own father Karam Chand in the commission of the mischief, but simply expressed ignorance.

7. PW-2 Des Raj in no uncertain terms stated that the structure was set afire by Karam Chand himself around 10 a.m. and not

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by the respondents at 12 in the noon, as alleged by the prosecution. No doubt, the prosecution cross-examined this witness with the leave of the Court but he was not confronted with any previous statement, which means that he is not contradicted and, therefore, there should be no reason to disbelieve his testimony. As a matter of fact, the testimony of this witness, to the extent that the incident had taken place at 10 a.m., is corroborated by the testimony of another witness examined by the prosecution, namely PW-6 Tara Chand, who says that the incident took place when he reached the village at 10 a.m. The statement of this witness not only corroborates the testimony of PW-2 Des Raj, with regard to the time of the incident, but also gives a lie to the statement of PW-1 Udhmi Devi that the incident had taken place at 12 in the noon.

8. In view of the abovestated position, we see no reason for interfering with the judgment of acquittal passed by the trial Court. Hence, the appeal is dismissed.

(Surjit Singh), J

October 24, 2007_(sd)

(Surinder Singh), J